REMARKS/ARGUMENTS

Claims 1-9 are pending in this application. By this Amendment, claims 1, 2, 5, 6, and 9 are amended; and claims 11-16 are presented as new.

REJECTIONS UNDER 35 U.S.C. § 103

In section 2 on pages 2-9, the Office Action rejects claims 1-9 under 35 U.S.C. § 103 as allegedly being unpatentable over PCT Publication Number WO/02/49343 to Leaning et al. (hereinafter, "Leaning") in view of U.S. Publication Number 2003/0236864 to Lai. Applicant respectfully traverses this rejection.

Independent claim 1, as amended, recites in part, "selecting at least one file ... based upon a **proximity in time to said fetching requests**" (emphasis added). Independent claims 1, 5, and 9 contain a similar recitation. Paragraph [0055], among others, provides support for this subject matter. This subject matter provides significant benefits. For example, by selecting a file based upon a proximity in time to a fetching request, a user is prevented from receiving out-of-date information. This is especially beneficial for live content. See, for example, paragraph [0014] of the published version of the application.

The Office Action cites Leaning as allegedly disclosing this subject matter, specifically citing page 10, among others. Leaning, however, fails to disclose that a file is selected based upon a **proximity in time to a fetching request**. Instead,

the cited sections disclose that after receiving a request, a first sub-file is transmitted. See e.g. page 5, lines 4-14. The first subfile is transmitted with no regard as to when the request is received. Leaning merely selects a sub-file based upon information contained in a request, and not **based upon the time of the request itself**. See e.g. page 6, lines 5-9 and page 11, lines 12-20.

Turning to Lai, the Lai specification fails to overcome the deficiencies of Leaning. Lai discloses a system for downloading a file that has been divided into packets. Lai does not, however, disclose that a packet is selected **based upon a proximity in time to a request**. Leaning and Lai therefore fail to disclose all of the limitations of independent claims 1, 5, and 9. Applicant respectfully submits that claims 1, 5, and 9 are allowable over the references of record for, at least, the foregoing reasons.

Claims 2-4 depend from allowable claim 1; and claims 6-8 depend from allowable claim 5. These claims are therefore allowable based, at least, on their respective dependencies. Accordingly, Applicant respectfully requests that the rejection of claims 1-9 under 35 U.S.C. § 103 be withdrawn.

NEW CLAIMS

By this amendment, claims 11-16 are presented as new. The subject matter contained therein does not constitute new matter; instead, this subject matter finds support in the specification at, for example, paragraphs [0042] and [0055]-[0058].

Claims 11-13 depend from allowable claim 1; and claim 14-16 depend from allowable claim 5. These claims are therefore allowable based, at least, on their respective dependencies. Accordingly, applicant respectfully requests entry and allowance of claims 11-16.

CONCLUSION

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, Juergen Krause-Polstorff, of NXP Corporation at (408) 474-9062.

Respectfully submitted,
KRAMER & AMADO, P.C.

Date: ___March 18, 2011___   ___/Eric J. Nuss/_____

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